

**IC 35-38**

**ARTICLE 38. PROCEEDINGS FOLLOWING  
DISMISSAL, VERDICT, OR FINDING**

**IC 35-38-1**

Chapter 1. Entry of Judgment and Sentencing

**IC 35-38-1-1**

**Judgment of conviction; pronouncement of sentence**

Sec. 1. (a) Except as provided in section 1.5 of this chapter, after a verdict, finding, or plea of guilty, if a new trial is not granted, the court shall enter a judgment of conviction.

(b) When the court pronounces the sentence, the court shall advise the person that the person is sentenced for not less than the earliest release date and for not more than the maximum possible release date.

*As added by P.L.311-1983, SEC.3. Amended by P.L.148-1995, SEC.3; P.L.98-2003, SEC.1.*

**IC 35-38-1-1.5**

**Converting Class D felony to Class A misdemeanor**

Sec. 1.5. (a) A court may enter judgment of conviction as a Class D felony with the express provision that the conviction will be converted to a conviction as a Class A misdemeanor within three (3) years if the person fulfills certain conditions. A court may enter a judgment of conviction as a Class D felony with the express provision that the conviction will be converted to a conviction as a Class A misdemeanor only if the person pleads guilty to a Class D felony that qualifies for consideration as a Class A misdemeanor under IC 35-50-2-7, and the following conditions are met:

(1) The prosecuting attorney consents.

(2) The person agrees to the conditions set by the court.

(b) For a judgment of conviction to be entered under subsection (a), the court, the prosecuting attorney, and the person must all agree to the conditions set by the court under subsection (a).

(c) The court is not required to convert a judgment of conviction entered as a Class D felony to a Class A misdemeanor if, after a hearing, the court finds:

(1) the person has violated a condition set by the court under subsection (a); or

(2) the period that the conditions set by the court under subsection (a) are in effect expires before the person successfully completes each condition.

However, the court may not convert a judgment of conviction entered as a Class D felony to a Class A misdemeanor if the person commits a new offense before the conditions set by the court under subsection (a) expire.

(d) The court shall enter judgment of conviction as a Class A misdemeanor if the person fulfills the conditions set by the court

under subsection (a).

(e) The entry of a judgment of conviction under this section does not affect the application of any statute requiring the suspension of a person's driving privileges.

(f) This section may not be construed to diminish or alter the rights of a victim (as defined in IC 35-40-4-8) in a sentencing proceeding under this chapter.

*As added by P.L.98-2003, SEC.2.*

### **IC 35-38-1-2**

#### **"Victim representative" defined; sentencing; date; hearing for increased penalty; imprisonment pending sentencing**

Sec. 2. (a) As used in this chapter, "victim representative" means a person designated by a sentencing court who is:

- (1) a spouse, parent, child, sibling, or other relative of; or
- (2) a person who has had a close personal relationship with; the victim of a felony who is deceased, incapacitated, or less than eighteen (18) years of age.

(b) Upon entering a conviction, the court shall set a date for sentencing within thirty (30) days, unless for good cause shown an extension is granted. If a presentence report is not required, the court may sentence the defendant at the time the judgment of conviction is entered. However, the court may not pronounce sentence at that time without:

- (1) inquiring as to whether an adjournment is desired by the defendant; and
- (2) informing the victim, if present, of a victim's right to make a statement concerning the crime and the sentence.

When an adjournment is requested, the defendant shall state its purpose and the court may allow a reasonable time for adjournment.

(c) If:

- (1) the state in the manner prescribed by IC 35-34-1-2.5 sought an increased penalty by alleging that the person was previously convicted of the offense; and
- (2) the person was convicted of the subsequent offense in a jury trial;

the jury shall reconvene for the sentencing hearing. The person shall be sentenced to receive the increased penalty if the jury (or the court, if the trial is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had a previous conviction for the offense.

(d) If the felony is nonsuspendible under IC 35-50-2-2, the judge shall order the defendant, if the defendant has previously been released on bail or recognizance, to be imprisoned in the county or local penal facility pending sentencing.

(e) Upon entering a conviction for a felony, the court shall designate a victim representative if the victim is deceased, incapacitated, or less than eighteen (18) years of age.

*As added by P.L.311-1983, SEC.3. Amended by P.L.50-1984, SEC.8; P.L.131-1985, SEC.14; P.L.36-1990, SEC.11.*

### **IC 35-38-1-2.5**

#### **Crime of deception**

Sec. 2.5. (a) As used in this section, "crime of deception" means any offense in which a person assumes the identity of another person, professes to be another person, uses the identifying information of another person, or falsely suggests that the person is acting with the authority of another person. The term includes an offense under IC 35-43-5.

(b) This section applies to an offender who has been convicted of a crime of deception.

(c) During or after the sentencing of a person convicted of a crime of deception, the court may, upon motion by the state or upon application by a victim or a victim's representative, issue an order:

- (1) describing the person whose credit history may be affected by the offender's crime of deception, with sufficient identifying information to assist another person in correcting the credit history; and
- (2) stating that the person described in subdivision (1) was the victim of a crime of deception that may have affected the person's credit history.

(d) The order described in subsection (c) may be used to correct the credit history of any person described in the order.

*As added by P.L.22-2003, SEC.3.*

### **IC 35-38-1-3**

#### **Presentence hearing**

Sec. 3. Before sentencing a person for a felony, the court must conduct a hearing to consider the facts and circumstances relevant to sentencing. The person is entitled to subpoena and call witnesses and to present information in his own behalf. The court shall make a record of the hearing, including:

- (1) a transcript of the hearing;
- (2) a copy of the presentence report; and
- (3) if the court finds aggravating circumstances or mitigating circumstances, a statement of the court's reasons for selecting the sentence that it imposes.

*As added by P.L.311-1983, SEC.3.*

### **IC 35-38-1-4**

#### **Presence of defendant when sentence pronounced; pronouncement of sentence against defendant corporation**

Sec. 4. (a) The defendant must be personally present at the time sentence is pronounced. If the defendant is not personally present when sentence is to be pronounced, the court may issue a warrant for his arrest.

(b) Sentence may be pronounced against a defendant corporation in the absence of counsel, if counsel fails to appear on the date of sentencing after reasonable notice.

*As added by P.L.311-1983, SEC.3.*

### **IC 35-38-1-5**

#### **Informing defendant of verdict and court's finding; defendant's statement; inclusion of cost of incarceration in sentencing order**

Sec. 5. (a) When the defendant appears for sentencing, the court shall inform the defendant of the verdict of the jury or the finding of the court. The court shall afford counsel for the defendant an opportunity to speak on behalf of the defendant. The defendant may also make a statement personally in the defendant's own behalf and, before pronouncing sentence, the court shall ask the defendant whether the defendant wishes to make such a statement. Sentence shall then be pronounced, unless a sufficient cause is alleged or appears to the court for delay in sentencing.

(b) A court that sentences a person to a term of imprisonment shall include the total costs of incarceration in the sentencing order. The court may not consider Class I credit under IC 35-50-6-3 in the calculation of the total costs of incarceration.

*As added by P.L.311-1983, SEC.3. Amended by P.L.85-2004, SEC.6.*

### **IC 35-38-1-6**

#### **Judgment and sentence when defendant charged and found guilty of offense and included offense**

Sec. 6. Whenever:

- (1) a defendant is charged with an offense and an included offense in separate counts; and
  - (2) the defendant is found guilty of both counts;
- judgment and sentence may not be entered against the defendant for the included offense.

*As added by P.L.311-1983, SEC.3.*

### **IC 35-38-1-7 Repealed**

*(Repealed by P.L.1-1990, SEC.344.)*

### **IC 35-38-1-7.1**

#### **Considerations in imposing sentence**

Sec. 7.1. (a) In determining what sentence to impose for a crime, the court shall consider:

- (1) the risk that the person will commit another crime;
- (2) the nature and circumstances of the crime committed;
- (3) the person's:
  - (A) prior criminal record;
  - (B) character; and
  - (C) condition;
- (4) whether the victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age;
- (5) whether the person committed the offense in the presence or within hearing of a person who is less than eighteen (18) years of age who was not the victim of the offense;
- (6) whether the person violated a protective order issued against the person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or IC 34-4-5.1 before their repeal), a workplace violence

restraining order issued against the person under IC 34-26-6, or a no contact order issued against the person; and

(7) any oral or written statement made by a victim of the crime.

(b) The court may consider the following factors as aggravating circumstances or as favoring imposing consecutive terms of imprisonment:

(1) The person has recently violated the conditions of any probation, parole, or pardon granted to the person.

(2) The person has a history of criminal or delinquent activity.

(3) The person is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a penal facility.

(4) Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime.

(5) The victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age.

(6) The victim of the crime was mentally or physically infirm.

(7) The person committed a forcible felony while wearing a garment designed to resist the penetration of a bullet.

(8) The person committed a sex crime listed in subsection (e) and:

(A) the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) and involved the sex organ of one (1) person and the mouth, anus, or sex organ of another person;

(B) the person had knowledge that the person was a carrier of HIV; and

(C) the person had received risk counseling as described in subsection (g).

(9) The person committed an offense related to controlled substances listed in subsection (f) if:

(A) the offense involved:

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact;

(B) the person had knowledge that the person was a carrier of the human immunodeficiency virus (HIV); and

(C) the person had received risk counseling as described in subsection (g).

(10) The person committed the offense in an area of a consolidated or second class city that is designated as a public safety improvement area by the Indiana criminal justice institute under IC 36-8-19.5.

(11) The injury to or death of the victim of the crime was the result of shaken baby syndrome (as defined in IC 16-41-40-2).

(12) Before the commission of the crime, the person

administered to the victim of the crime, without the victim's knowledge, a sedating drug or a drug that had a hypnotic effect on the victim, or the person had knowledge that such a drug had been administered to the victim without the victim's knowledge.

(13) The person:

(A) committed trafficking with an inmate under IC 35-44-3-9; and

(B) is an employee of the penal facility.

(14) The person committed the offense in the presence or within hearing of a person who is less than eighteen (18) years of age who was not the victim of the offense.

(c) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:

(1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.

(2) The crime was the result of circumstances unlikely to recur.

(3) The victim of the crime induced or facilitated the offense.

(4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(d) The criteria listed in subsections (b) and (c) do not limit the matters that the court may consider in determining the sentence.

(e) For the purposes of this article, the following crimes are considered sex crimes:

(1) Rape (IC 35-42-4-1).

(2) Criminal deviate conduct (IC 35-42-4-2).

(3) Child molesting (IC 35-42-4-3).

(4) Child seduction (IC 35-42-4-7).

(5) Prostitution (IC 35-45-4-2).

(6) Patronizing a prostitute (IC 35-45-4-3).

(7) Incest (IC 35-46-1-3).

(8) Sexual misconduct with a minor under IC 35-42-4-9(a).

(f) For the purposes of this article, the following crimes are considered offenses related to controlled substances:

(1) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).

(2) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(4) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(5) Possession of cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-6).

(6) Possession of a controlled substance (IC 35-48-4-7).

(7) Dealing in paraphernalia (IC 35-48-4-8.5).

(8) Possession of paraphernalia (IC 35-48-4-8.3).

(9) Offenses relating to registration (IC 35-48-4-14).

(g) For the purposes of this section, a person received risk counseling if the person had been:

(1) notified in person or in writing that tests have confirmed the presence of antibodies to the human immunodeficiency virus (HIV) in the person's blood; and

(2) warned of the behavior that can transmit HIV.

*As added by P.L.1-1990, SEC.345. Amended by P.L.1-1991, SEC.195; P.L.2-1993, SEC.181; P.L.21-1994, SEC.2; P.L.1-1997, SEC.145; P.L.210-1997, SEC.1; P.L.1-1998, SEC.195; P.L.51-1998, SEC.4; P.L.71-1998, SEC.1; P.L.31-1998, SEC.1; P.L.183-1999, SEC.1; P.L.17-2001, SEC.12; P.L.280-2001, SEC.51; P.L.133-2002, SEC.61; P.L.221-2003, SEC.16.*

### **IC 35-38-1-7.5**

#### **Findings regarding sexually violent predators**

Sec. 7.5. (a) As used in this section, "sexually violent predator" has the meaning set forth in IC 5-2-12-4.5.

(b) This section applies whenever a court sentences a person for a sex offense listed in IC 5-2-12-4(a)(1) through IC 5-2-12-4(a)(10) for which the person is required to register with the sheriff (or the police chief of a consolidated city) under IC 5-2-12-5.

(c) At the sentencing hearing, the court shall determine whether the person is a sexually violent predator. Before making a determination under this section, the court shall consult with a board of experts consisting of two (2) board certified psychologists or psychiatrists who have expertise in criminal behavioral disorders.

(d) If the court finds that a person is a sexually violent predator:

(1) the person is required to register with the sheriff (or the police chief of a consolidated city) as provided in IC 5-2-12-13(b); and

(2) the court shall send notice of its finding under this subsection to the criminal justice institute.

(e) A person who is found by a court to be a sexually violent

predator under subsection (c) may petition the court to consider whether the person is no longer a sexually violent predator. The person may file a petition under this subsection not earlier than ten (10) years after the sentencing court makes its finding under subsection (c). A person may file a petition under this subsection not more than one (1) time per year. If a court finds that the person is no longer a sexually violent predator, the court shall send notice to the Indiana criminal justice institute that the person is no longer considered a sexually violent predator.

*As added by P.L.56-1998, SEC.17. Amended by P.L.1-1999, SEC.77; P.L.238-2001, SEC.18; P.L.116-2002, SEC.20.*

### **IC 35-38-1-7.7**

#### **Crime of domestic violence; sentence procedures**

Sec. 7.7. (a) At the time of sentencing, a court shall determine whether a person has committed a crime of domestic violence (as defined in IC 35-41-1-6.3).

(b) A determination under subsection (a) must be based upon:

- (1) evidence introduced at trial; or
- (2) a factual basis provided as part of a guilty plea.

(c) Upon determining that a defendant has committed a crime of domestic violence, a court shall advise the defendant of the consequences of this finding.

(d) A judge shall record a determination that a defendant has committed a crime of domestic violence on a form prepared by the division of state court administration.

*As added by P.L.195-2003, SEC.4.*

### **IC 35-38-1-8**

#### **Presentence report to be considered by court before sentencing; advisement of victim of right to make statement**

Sec. 8. (a) Except as provided in subsection (c), a defendant convicted of a felony may not be sentenced before a written presentence report is prepared by a probation officer and considered by the sentencing court. Delay of sentence until a presentence report is prepared does not constitute an indefinite postponement or suspension of sentence.

(b) A victim present at sentencing in a felony or misdemeanor case shall be advised by the court of a victim's right to make a statement concerning the crime and the sentence.

(c) A court may sentence a person convicted of a Class D felony without considering a written presentence report prepared by a probation officer. However, if a defendant is committed to the department of correction or a community corrections program under IC 35-38-2.6, the probation officer shall prepare a report that meets the requirements of section 9 of this chapter to be sent with the offender to the department in lieu of the presentence investigation report required by section 14 of this chapter.

*As added by P.L.311-1983, SEC.3. Amended by P.L.131-1985, SEC.16; P.L.240-1991(ss2), SEC.90; P.L.104-1997, SEC.6.*



### **IC 35-38-1-8.5**

#### **Presentence investigation; notice to victim; victim impact statement; contents**

Sec. 8.5. (a) A probation officer who is conducting a presentence investigation shall send written notification of the following to each victim or each victim representative designated by the court under section 2(e) of this chapter:

- (1) The date, time, and place of the sentencing hearing set by the court.
- (2) The right of the victim or victim representative to make an oral or written statement to the court at the sentencing hearing.
- (3) The right of the victim or victim representative to submit or refuse to submit to the probation officer a written or oral statement of the impact of the crime upon the victim for inclusion by the probation officer in a victim impact statement.

(b) The notification required by subsection (a) must be sent at least seven (7) days before the date of the sentencing hearing to the last known address of the victim or the victim representative.

(c) The probation officer shall prepare a victim impact statement for inclusion in the convicted person's presentence report. The victim impact statement consists of information about each victim and the consequences suffered by a victim or a victim's family as a result of the crime.

(d) Unless the probation officer certifies to the court under section 9 of this chapter that a victim or victim representative could not be contacted or elected not to submit a statement to the probation officer concerning the crime, the victim impact statement required under this section must include the following information about each victim:

- (1) A summary of the financial, emotional, and physical effects of the crime on the victim and the victim's family.
- (2) Personal information concerning the victim, excluding telephone numbers, place of employment, and residential address.
- (3) Any written statements submitted by a victim or victim representative to the probation officer.
- (4) If the victim desires restitution, the basis and amount of a request for victim restitution.

(e) A victim or victim representative is not required to submit a statement or to cooperate in the preparation of the victim impact statement required under this section.

*As added by P.L.36-1990, SEC.12. Amended by P.L.216-1996, SEC.12.*

### **IC 35-38-1-9**

#### **"Recommendation" and "victim" defined; presentence investigation matters; certification by probation officer when no written statements submitted**

Sec. 9. (a) As used in this chapter, "recommendation" and "victim" have the meanings set out in IC 35-35-3-1.

(b) The presentence investigation consists of the gathering of

information with respect to:

- (1) the circumstances attending the commission of the offense;
- (2) the convicted person's history of delinquency or criminality, social history, employment history, family situation, economic status, education, and personal habits; and
- (3) the impact of the crime upon the victim.

(c) The presentence investigation may include any matter that the probation officer conducting the investigation believes is relevant to the question of sentence, and must include:

- (1) any matters the court directs to be included;
- (2) any written statements submitted to the prosecuting attorney by a victim under IC 35-35-3;
- (3) any written statements submitted to the probation officer by a victim; and
- (4) preparation of the victim impact statement required under section 8.5 of this chapter.

(d) If there are no written statements submitted to the probation officer, he shall certify to the court:

- (1) that he has attempted to contact the victim; and
- (2) that if he has contacted the victim he has offered to accept the written statements of the victim or to reduce his oral statements to writing, concerning the sentence, including the acceptance of any recommendation.

(e) A presentence investigation report prepared by a probation officer must include the information and comply with any other requirements established in the rules adopted under IC 11-13-1-8.

*As added by P.L.311-1983, SEC.3. Amended by P.L.36-1990, SEC.13; P.L.240-1991(ss2), SEC.91; P.L.216-1996, SEC.13.*

### **IC 35-38-1-9.5**

#### **Confidential information; convicted person carrier of human immunodeficiency virus (HIV); sex crimes and controlled substances**

Sec. 9.5. A probation officer shall obtain confidential information from the state department of health under IC 16-41-8-1 to determine whether a convicted person was a carrier of the human immunodeficiency virus (HIV) when the crime was committed if the person is:

- (1) convicted of a sex crime listed in section 7.1(e) of this chapter and the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) as described in section 7.1(b)(8) of this chapter; or
- (2) convicted of an offense relating to controlled substances listed in section 7.1(f) of this chapter and the offense involved the conditions described in section 7.1(b)(9)(A) of this chapter.

*As added by P.L.123-1988, SEC.25. Amended by P.L.184-1989, SEC.24; P.L.1-1990, SEC.346; P.L.2-1992, SEC.876; P.L.2-1993, SEC.182.*

## **IC 35-38-1-10**

### **Presentence investigation; physical or mental examination**

Sec. 10. The court may order that the convicted person:

- (1) undergo a thorough physical or mental examination in a designated facility as part of the presentence investigation; and
- (2) remain in the facility for examination for not more than ninety (90) days.

*As added by P.L.311-1983, SEC.3.*

## **IC 35-38-1-10.5**

### **Human immunodeficiency virus (HIV) screening test; sex crimes and controlled substances; confirmatory test; presentence investigation; marital privilege; mental health service provider's civil and criminal immunity**

Sec. 10.5. (a) The court:

- (1) shall order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the person is:

(A) convicted of a sex crime listed in section 7.1(e) of this chapter and the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) as described in section 7.1(b)(8) of this chapter; or

(B) convicted of an offense related to controlled substances listed in section 7.1(f) of this chapter and the offense involved the conditions described in section 7.1(b)(9)(A) of this chapter; and

- (2) may order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the court has made a finding of probable cause after a hearing under section 10.7 of this chapter.

(b) If the screening test required by this section indicates the presence of antibodies to HIV, the court shall order the person to undergo a confirmatory test.

(c) If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health and require a probation officer to conduct a presentence investigation to:

- (1) obtain the medical record of the convicted person from the state department of health under IC 16-41-8-1(a)(3); and
- (2) determine whether the convicted person had received risk counseling that included information on the behavior that facilitates the transmission of HIV.

(d) A person who, in good faith:

- (1) makes a report required to be made under this section; or
- (2) testifies in a judicial proceeding on matters arising from the report;

is immune from both civil and criminal liability due to the offering of that report or testimony.

(e) The privileged communication between a husband and wife or between a health care provider and the health care provider's patient

is not a ground for excluding information required under this section.

(f) A mental health service provider (as defined in IC 34-6-2-80) who discloses information that must be disclosed to comply with this section is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

*As added by P.L.123-1988, SEC.26. Amended by P.L.184-1989, SEC.25; P.L.1-1990, SEC.347; P.L.2-1992, SEC.877; P.L.2-1993, SEC.183; P.L.1-1998, SEC.196; P.L.71-1998, SEC.2.*

#### **IC 35-38-1-10.6**

##### **Crime victims; notice that criminal had antibodies for human immunodeficiency virus (HIV); counseling**

Sec. 10.6. (a) The state department of health shall notify victims of the crimes listed in section 7.1(e) and 7.1(f) of this chapter if tests conducted under section 10.5 or section 10.7 of this chapter confirm that the person tested had antibodies for the human immunodeficiency virus (HIV).

(b) The state department of health shall provide counseling to persons notified under this section.

*As added by P.L.123-1988, SEC.27. Amended by P.L.1-1990, SEC.348; P.L.2-1992, SEC.878; P.L.71-1998, SEC.3.*

#### **IC 35-38-1-10.7**

##### **Human immunodeficiency virus (HIV) screening test; request of victim of sex offense; hearing; disclosure of test results**

Sec. 10.7. (a) Upon:

(1) written request made to a prosecuting attorney by an alleged victim of a sex offense listed in section 7.1(e) of this chapter; and

(2) after a hearing held under this section, a court entering a finding that there is probable cause to believe the alleged victim is a victim of a sex offense listed in section 7.1(e) of this chapter that was committed by the defendant;

the court may order an individual named as defendant in the prosecution of the offense to undergo a screening test for human immunodeficiency virus (HIV).

(b) Before issuing an order for testing under subsection (a), the court shall conduct a hearing at which both the alleged victim and the defendant have the right to be present. Both the alleged victim and the defendant must be notified of:

(1) the date, time, and location of the hearing; and

(2) their right to be present at the hearing.

(c) During the hearing only affidavits, counteraffidavits, and medical records that relate to the material facts of the case used to support or rebut a finding of probable cause to believe the alleged victim was exposed to human immunodeficiency virus (HIV) as a result of the alleged sex offense may be admissible.

(d) The written request of the alleged victim made under subsection (a) must be filed by the prosecuting attorney with the court and sealed by a court.

(e) The requirements of section 10.5 of this chapter apply to testing ordered by a court under this section.

(f) If the defendant has not been convicted, the results of a test conducted under this section shall be kept confidential. The results may not be made available to any person or public or private agency other than the following:

- (1) The defendant and the defendant's counsel.
- (2) The prosecuting attorney.
- (3) The department of correction.
- (4) The victim and the victim's counsel.

(g) A victim may disclose the results of a test to an individual or organization to protect the health and safety of or to seek compensation for:

- (1) the victim;
- (2) the victim's sexual partner; or
- (3) the victim's family.

(h) A person that knowingly or intentionally:

- (1) receives notification or disclosure of the results of a test under this section; and
- (2) discloses the results of the test in violation of this section;

commits a Class B misdemeanor.

*As added by P.L.71-1998, SEC.4.*

#### **IC 35-38-1-11**

##### **Presentence memorandum by convicted person**

Sec. 11. At any time before sentencing, the convicted person may file with the court a written memorandum setting forth any information he considers pertinent to the question of sentence. The convicted person may attach written statements by others in support of facts alleged in the memorandum.

*As added by P.L.311-1983, SEC.3.*

#### **IC 35-38-1-12**

##### **Presentence investigation; advising defendant of contents and conclusions; copy of presentence report; opportunity for victim to make statement; sources of confidential information**

Sec. 12. (a) Before imposing sentence, the court shall:

- (1) advise the defendant or his counsel and the prosecuting attorney of the factual contents and conclusions of the presentence investigation; or
- (2) provide the defendant or his counsel and the prosecuting attorney with a copy of the presentence report.

The court also shall offer the victim, if present, an opportunity to make a statement concerning the crime and the sentence.

(b) The sources of confidential information need not be disclosed. The court shall furnish the factual contents of the presentence investigation or a copy of the presentence report sufficiently in advance of sentencing so that the defendant will be afforded a fair opportunity to controvert the material included.

*As added by P.L.311-1983, SEC.3. Amended by P.L.131-1985,*

*SEC.17.*

### **IC 35-38-1-13**

#### **Confidentiality of presentence report or memoranda**

Sec. 13. (a) Any:

- (1) presentence report or memoranda; and
- (2) report of a physical or mental examination;

submitted to the court in connection with sentencing shall be kept confidential.

(b) The materials specified in subsection (a) may not be made available to any person or public or private agency other than:

- (1) the convicted person and his counsel;
- (2) the prosecuting attorney;
- (3) a probation department;
- (4) the community corrections program in which an offender is placed under IC 35-38-2.6; and
- (5) the Indiana criminal justice institute established under IC 5-2-6;

except where specifically required or permitted by statute or upon specific authorization by the court and the convicted person.

*As added by P.L.311-1983, SEC.3. Amended by P.L.135-1993, SEC.5; P.L.292-1995, SEC.1.*

### **IC 35-38-1-14**

#### **Imprisonment**

Sec. 14. If a convicted person is sentenced to a term of imprisonment, the court shall send a copy of:

- (1) the presentence report;
- (2) any presentence memorandum filed by the convicted person;
- (3) the report of any physical or mental examination made incident to the question of sentence; and
- (4) any record made under IC 35-35-2;

to the department of correction.

*As added by P.L.311-1983, SEC.3.*

### **IC 35-38-1-15**

#### **Erroneous sentence; nature; correction**

Sec. 15. If the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice is given to the convicted person. The convicted person and his counsel must be present when the corrected sentence is ordered. A motion to correct sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.

*As added by P.L.311-1983, SEC.3.*

### **IC 35-38-1-16**

#### **Certified copies of corrected or modified sentence**

Sec. 16. Whenever:

- (1) a court corrects an erroneous sentence or modifies a

previously imposed sentence; and  
(2) the convicted person is incarcerated or is to be incarcerated  
by the department of correction;  
the court shall immediately send certified copies of the corrected or  
modified sentence to the department of correction.  
*As added by P.L.311-1983, SEC.3.*

#### **IC 35-38-1-17**

##### **Reduction or suspension of sentence**

Sec. 17. (a) Within three hundred sixty-five (365) days after:

- (1) the defendant begins serving his sentence;
- (2) a hearing at which the defendant is present and of which the  
prosecuting attorney has been notified; and
- (3) obtaining a report from the department of correction  
concerning the defendant's conduct while imprisoned;

the court may reduce or suspend the sentence. The court must  
incorporate its reasons in the record.

(b) If more than three hundred sixty-five (365) days have elapsed  
since the defendant began serving the sentence and after a hearing at  
which the convicted person is present, the court may reduce or  
suspend the sentence, subject to the approval of the prosecuting  
attorney. However, if in a sentencing hearing for a defendant  
conducted after June 30, 2001, the court could have placed the  
defendant in a community corrections program as an alternative to  
commitment to the department of correction, the court may modify  
the defendant's sentence under this section without the approval of  
the prosecuting attorney to place the defendant in a community  
corrections program under IC 35-38-2.6.

(c) The court must give notice of the order to reduce or suspend  
the sentence under this section to the victim (as defined in  
IC 35-35-3-1) of the crime for which the defendant is serving the  
sentence.

(d) The court may suspend a sentence for a felony under this  
section only if suspension is permitted under IC 35-50-2-2.

(e) The court may deny a request to suspend or reduce a sentence  
under this section without making written findings and conclusions.

(f) Notwithstanding subsections (a) and (b), the court is not  
required to conduct a hearing before reducing or suspending a  
sentence if:

- (1) the prosecuting attorney has filed with the court an  
agreement of the reduction or suspension of the sentence; and
- (2) the defendant has filed with the court a waiver of the right  
to be present when the order to reduce or suspend the sentence  
is considered.

*As added by P.L.311-1983, SEC.3. Amended by P.L.317-1985,  
SEC.1; P.L.204-1986, SEC.1; P.L.240-1991(ss2), SEC.92;  
P.L.291-2001, SEC.224.*

#### **IC 35-38-1-18**

##### **Fines and costs; commitment instead of fine; default**

Sec. 18. (a) Whenever the court imposes a fine, it shall conduct a hearing to determine whether the convicted person is indigent. If the person is not indigent, the court shall order:

- (1) that the person pay the entire amount at the time sentence is pronounced;
- (2) that the person pay the entire amount at some later date;
- (3) that the person pay specified parts at designated intervals;
- or
- (4) at the request of the person, commitment of the person to the county jail for a period of time set by the court in lieu of a fine. If the court orders a person committed to jail under this subdivision, the person's total confinement for the crime that resulted in the conviction must not exceed the maximum term of imprisonment prescribed for the crime under IC 35-50-2 or IC 35-50-3.

(b) Upon any default in the payment of the fine:

- (1) an attorney representing the county may bring an action on a debt for the unpaid amount; or
- (2) the court may direct that the person, if the person is not indigent, be committed to the county jail and credited toward payment at the rate of twenty dollars (\$20) for each twenty-four (24) hour period the person is confined, until the amount paid plus the amount credited equals the entire amount due.

*As added by P.L.311-1983, SEC.3. Amended by P.L.204-1986, SEC.2; P.L.305-1987, SEC.35; P.L.137-1989, SEC.11.*

#### **IC 35-38-1-19**

##### **Repealed**

*(Repealed by P.L.50-1984, SEC.5.)*

#### **IC 35-38-1-20**

##### **Repealed**

*(Repealed by P.L.305-1987, SEC.38.)*

#### **IC 35-38-1-21**

##### **Home detention; petition and hearing**

Sec. 21. (a) A court that receives a petition from the department of correction under IC 35-38-3-5 may, after notice to the prosecuting attorney of the judicial circuit in which the defendant's case originated, hold a hearing for the purpose of determining whether the offender named in the petition may be placed in home detention under IC 35-38-2.5 instead of commitment to the department of correction for the remainder of the offender's minimum sentence.

(b) Notwithstanding IC 35-35-3-3(e), and after a hearing held under this section, a sentencing court may order the offender named in the petition filed under IC 35-38-3-5 to be placed in home detention under IC 35-38-2.5 instead of commitment to the department of correction for the remainder of the offender's minimum sentence.

*As added by P.L.98-1988, SEC.4.*



### **IC 35-38-1-22**

#### **Juveniles; service of misdemeanor sentences in juvenile detention facilities**

Sec. 22. A court that imposes a sentence for conviction of a misdemeanor upon a person who is less than eighteen (18) years of age may enter an order requiring that the convicted person serve the sentence in a juvenile detention facility established under IC 31-31-8 (or IC 31-6-9-5 before its repeal). However, before an order may be entered under this section, the court must secure the written approval of the judge of the juvenile court allowing the detention of the person in the juvenile detention facility.

*As added by P.L.173-1988, SEC.2. Amended by P.L.271-1989, SEC.2; P.L.73-1992, SEC.11; P.L.1-1997, SEC.146.*

### **IC 35-38-1-23**

#### **Repealed**

*(Repealed by P.L.183-1999, SEC.4.)*

### **IC 35-38-1-24**

#### **Community transition program; Class C or Class D felony**

Sec. 24. (a) This section applies to a person if the most serious offense for which the person is committed is a Class C or Class D felony.

(b) Not later than forty-five (45) days after receiving a notice under IC 11-10-11.5-2, the sentencing court may order the department of correction to retain control over a person until the person completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to the term, if the court makes specific findings that support a determination:

(1) that placement of the person in a community transition program:

(A) places the person in danger of serious bodily injury or death; or

(B) represents a substantial threat to the safety of others; or

(2) of other good cause.

If the court issues an order under this section, the department of correction may not assign a person to a community transition program.

(c) The court may make a determination under this section without a hearing. The court shall consider any written statement presented to the court by a victim of the offender's crime or by an offender under IC 11-10-11.5-4.5. The court in its discretion may consider statements submitted by a victim after the time allowed for the submission of statements under IC 11-10-11.5-4.5.

(d) The court shall make written findings for a determination under this section, whether or not a hearing was held.

(e) Not later than five (5) days after making a determination under this section, the court shall send a copy of the order to the:

(1) prosecuting attorney where the person's case originated; and

(2) department of correction.

*As added by P.L.273-1999, SEC.210. Amended by P.L.90-2000, SEC.17.*

#### **IC 35-38-1-25**

##### **Community transition program; murder or Class A or B felony**

Sec. 25. (a) This section applies to a person if the most serious offense for which the person is committed is murder, a Class A felony, or a Class B felony.

(b) A sentencing court may sentence a person or modify the sentence of a person to assign the person to a community transition program for any period that begins after the person's community transition program commencement date (as defined in IC 11-8-1-5.6) and ends when the person completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to the term, if the court makes specific findings of fact that support a determination that it is in the best interests of justice to make the assignment. The order may include any other condition that the court could impose if the court had placed the person on probation under IC 35-38-2 or in a community corrections program under IC 35-38-2.6.

(c) The court may make a determination under this section without a hearing. The court shall consider any written statement presented to the court by a victim of the offender's crime or by an offender under IC 11-10-11.5-4.5. The court in its discretion may consider statements submitted by a victim after the time allowed for the submission of statements under IC 11-10-11.5-4.5.

(d) The court shall make written findings for a determination under this section, whether or not a hearing was held.

(e) Not later than five (5) days after making a determination under this section, the court shall send a copy of the order to the:

- (1) prosecuting attorney where the person's case originated; and
- (2) department of correction.

*As added by P.L.273-1999, SEC.211. Amended by P.L.90-2000, SEC.18; P.L.85-2004, SEC.39.*

#### **IC 35-38-1-26**

##### **Repealed**

*(Repealed by P.L.90-2000, SEC.25.)*